

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

ORDER

Now pending before the Court is Defendant Hinestroza's Motion to Dismiss Count Two for Duplicity. The defendant argues that Count Two of the superseding Indictment is impermissibly duplicitous because it charges violations of 18 U.S.C. § 924(c) and § 924(j). Defendant further argues that Count Two is also duplicitous and impermissibly vague for additionally incorporating the underlying drug trafficking offense, the elements of murder under 18 U.S.C. § 1111, and the aiding and abetting theory under 18 U.S.C. § 2. According to the defendant, Count Two charges essentially five offenses in one count.

On September 22, 2005, United States Magistrate Judge Sarah W. Hays issued her Report and Recommendation. On October 6, 2005, defendant filed his objections.

Upon careful and independent review of the pending motion, defendant's objections to the Magistrate's Report and Recommendation, as well as the applicable law, this Court hereby adopts and incorporates as its own Opinion and Order the Report and Recommendation of United States Magistrate Judge Sarah W. Hays.

Accordingly, it is hereby ORDERED that Defendant's Motion to Dismiss Count Two for Duplicity is OVERRULED and DENIED.

SO ORDERED.

/s/ Gary A. Fenner
GARY A. FENNER, JUDGE
United States District Court

DATED: October 11, 2005